UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

UNITED NURSES & ALLIED PROFESSIONALS
(KENT HOSPITAL),

Respondent,

Case No. 1-CB-11135

and

Jeanette Geary, an Individual,

Charging Party.

CHARGING PARTY'S EXCEPTIONS AND BRIEF IN SUPPORT OF EXCEPTIONS

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Pursuant to NLRB Rule and Regulation 102.46, these Exceptions and Brief in Support of Exceptions are filed on behalf of Charging Party Jeanette Geary, in support of her unfair labor practice charge filed against the United Nurse & Allied Professionals Union ("UNAP").

I. INTRODUCTION

A. Issues Presented.

There are two issues in this case. First, should the union be obliged to give nonmember objectors written proof that the financial information disclosed to them has been professionally audited by an independent accountant? Second, may the Respondent United Nurses & Allied Professionals Union (the "union", "UNAP") force nonmembers who have objected under *Communications Workers of America v. Beck*, 487 U.S. 735 (1988), to pay for the Union's lobbying activities?

Charging Party contends that the two issues are related: a reliable, independent verification of the union's expenses would stop unions from blurring the lines between chargeable and non-chargeable expenses in specific expense items, such as lobbying. Concerning the independent verification of the Union's expenses by a certified public accountant, Charging Party contends that the NLRB's standard for *Beck* disclosure requirements –at least as argued by the Acting General Counsel here– is almost meaningless, since it provides no guarantee of the disclosure's legal and financial reliability for *Beck* objectors. To comply with the Acting General Counsel's proposed

standard, an accounting professional has only to conduct a review of uncertain thoroughness of the union's general expenses and state that it has done so. The union then would be free to recast the numbers from the "audit" into its own unaudited financial statement, using its own criteria, according to its own needs, and without fear of oversight from a financial auditor.[1] Such a document provides no assurance or reliable information to the user. Such a standard violates the entire rationale of *Beck* and other cases which sought to protect the statutory and constitutional right of nonmembers to not pay for the union's non-representational expenses, including political activity. All the union has to do to comply with the NLRB's standard is provide the *Beck* objector with a statement that the auditor has reviewed the union's *general* expenses, not the breakdown of expenses which is given to the objector, who uses the financial statement to decide whether or not to object to paying for the expenses. Under this standard, there will be no proof that any independent auditor has reviewed the numbers on the *Beck* disclosures. As argued below, while this may satisfy the Acting General Counsel's toothless policy, the standard does not conform with case law, and should be strengthened. The Board should oblige unions to provide reliable proof that the financial statements provided to *Beck* objectors have

[1]At the hearing, UNAP unintentionally demonstrated the need for financial oversight when it introduced into evidence Resp. Ex. 2. This document purported to be a summary of UNAP's expenses. After testifying at length concerning the significance of the document's numbers, on cross-examination it became obvious that the Respondent's witness was not familiar with the document, did not know when it was produced, had made contradictory claims concerning the document's origin, had misunderstood the meaning of some of its contents, and had included at least one major arithmetical error contained in it.

been reviewed and verified by an accounting professional.

The second issue is the chargeability to nonmember objectors of the Union's lobbying. Charging Party contends that none of the lobbying in dispute was chargeable under either the Board's *Transport Workers of America and Local 525 (Johnson Controls World Services)*, 329 NLRB 543 (1999) standard or *Abrams v. Communications Workers of America*, 59 F.3d 1373 (D.C. Cir. 1995) or the stricter standards imposed on private and public sector unions by federal appellate courts and the Supreme Court, under the NLRA, 29 U.S.C. § 151, *et seq.* and the U.S. Constitution. U.S. Const. amend. I. When employees are forced to pay money to a union in order to keep their jobs, they at least should be free from paying for the union's political activity. Under the ALJ's ruling here, a union could force employees to pay for a vast range of political spending, including lobbying, provided that the union can somehow show a correlation between the looked for legislative outcome and the union's expansively conceived role as the employees' collective bargaining agent. Such a standard provides no protection for employees from being forced to support the union's political agenda.

B. Facts

1. UNAP's *Beck* Disclosure.

The first issue in this case turns more on the legal question of whether the union complied with its legal obligations under *Beck*, and subsequent Board enforcement standards than on factual considerations. Nevertheless, it is important to understand the

context in which the complaint arose, and analyze as "facts" the documentary evidence at issue, as well as the testimony describing those documents. Above all, the court must consider all that is contained in UNAP's letter to *Beck* Objectors, sent September 30, 2009. Jt. Ex. 2(a) thru (d).

Charging Party Jeanette Geary is an emergency room nurse at a private hospital called Kent Hospital, in Warwick, Rhode Island. Geary is part of a bargaining unit represented by the Respondent UNAP and its Local affiliate, Local 5008. Charging Party is not a member of the union, and is a *Beck* objector. Amended Complaint at ¶ 9(a). After exercising her right to object under *Beck*, the Respondent mailed Geary and other *Beck* objectors a package of documents containing a cover letter from the union president and three pages of financial disclosures on spreadsheets. Jt. Ex. 2(a)-(d). Those documents are fully described as follows:

Exhibit 2(a) is a letter from UNAP President Linda McDonald to the *Beck* objectors. In the letter, McDonald states that the "major categories of expenses have been verified by a certified public accountant ("CPA")." Although both the Respondent and counsel for Acting General Counsel referred to a CPA letter which purportedly related to an audit of the union's financial statements, this document was not offered into evidence. Tr. 80:3-7. Counsel for the Acting General Counsel, Don Firenze, testified that the CPA's letter was "put into evidence", but such a letter is nowhere in the record. Apparently referring to the letter's absence from the record, Counsel for the Acting General Counsel

also stated, cryptically: "And by the way, I made a serious error." Tr. 80:4

Regarding the process by which the union produced its *Beck* disclosures, Richard Brooks, UNAP's Executive Director, responded to a question that the "numbers [he] relied on to produce that document [Ex. 2(c), UNAP's *Beck* financial statement], were subject to an audit." Tr. 119:11-13. Brooks also admitted that the "CPA's audit did *not address chargeable and non-chargeable.*" Tr. 123:24-5. (Emphasis added).

Exhibit 2(b) is an untitled document with some names listed under "Staff" and "Officers." Opposite the names is a number under the heading "Hrs/week," and "Chargeable time." "Chargeable time" is divided into "hrs/week" and "% of time worked." At the bottom of Exhibit 2(b) is a row entitled "Totals" under "Hrs/week" and "Chargeable time "hrs/week." The total hours worked by officers and staff per week is given as 268 and the total hours chargeable is given as 248.4. The far right column apparently gives a percentage of time worked on chargeable activities, but the total for that column bears no relation to the total for the hours worked per week. Within the disclosure package, there is no indication on Exhibit 2(b) regarding the calculations, no dates, and no written explanation of the document.

Exhibit 2(c) is a spreadsheet document entitled "*Beck* calculations based on total expenses (July 1, 2008-June 30, 2009). The document is undated. The document does not indicate whether the expenses listed pertain to UNAP or one of its affiliate locals. A note below the spreadsheet document states: "The 93% charged to personnel and indirect costs

is based on calculation of total paid time of UNAP staff and officers for chargeable activities. (*See* Sheet 2)" Without further explanation, the document apparently allocates as chargeable 93 percent of some costs, *e.g.*, building costs, but not others, *e.g.*, meals and entertainment, special projects, printing, postage, and the "Vermont Council," all charged without explanation at 97 percent. The document provides no rationale for why 90 percent chargeability is applied to the total expenses.

The sole item relating to lobbying is a $45.00 expense listed as "Lobbyist" and inexplicably charged to objectors at 95 percent.

Exhibit 2(d) is evidently not a list of expenses at all. The document has no title but appears to be a budget of estimated costs. Inexplicably, a chargeable rate of 97 percent is applied to the total of what are not expenses, evidently, but projected costs. Under the inexplicable column heading "Budget Balance" most of these projected expenses are listed as 100 percent chargeable, such as $500.00 for "Miscellanous" [sic], $1,000.00 for "Equipment," $500.00 for "Meetings x 4," $2,728.00 for "Postage x 10," and $2,000.00 for "Printing 1.46 book." The projected expenses for "Rep/Officer Stipend," "Officer Expenses," and "Convention/Retreat" are inexplicably charged at a 97 percent rate.

Based on these financial statements, objecting employees Coby Myrtle and Meg Webb availed themselves of the union's internal challenge procedure for *Beck* objectors. Tr. 91:11-12.

2. A Summary of UNAP's Lobbying Activity.

UNAP engaged in legislative activity in the state of Rhode Island and Vermont during the relevant time period, that is, fiscal year 2009, running from July 1 2008-June 30, 2009. Jt. Ex. 6-14. Richard Brooks is Executive Director of UNAP and responsible for UNAP's lobbying efforts. Tr. 24:14. Brooks also helps decide the union's lobbying strategy, "prioriti[zing] our lobbying for those bills that directly impact our members' jobs, working conditions, job security, and the like." Tr. 63:21-23. Brooks did a "detailed review of all [his] activities over the course of the year. Tr. 28:1. Brooks testified at length concerning the bills UNAP lobbied on during the year.[2]

i. UNAP's Rhode Island Lobbying.[3]

a. An Act Relating to Health And Safety (RI). That bill would have made it a statutory requirement that a UNAP representative be placed on the governing body of any hospital which controls over 50 percent of the hospital beds in Rhode Island. Jt. Ex. 6.
b. A bill "Relating To Public Officers and Employees –Retirement System– Contributions and Benefits." The bill applied solely to public employment. Jt. Ex. 7. UNAP Local 5019 consists of public employees. Jt. Ex. 7.
c. A bill which would have allowed health care professionals the option of receiving "wallet license cards." Jt. Ex. 8.
d. A bill designed to "determin[e] [the] need for new health care equipment and new institutional health services." Jt. Ex. 9.
e. A bill which would place a statutory compensation cap on "certain

[2] Charging Party's quashed subpoena (¶ 14) had requested similar timesheets and other records similar to the documents concerning which Brooks testified, detailing the time spent by union personnel on legislative activities.

[3] The ALJ found lobbying on An Act Relating to Health and Safety (Jt. Ex. 6) and The Hospital Payments Act (Jt. Ex. 12) to be chargeable to *Beck* objectors. ALJD 6:30-32

hospital employees" including "officers, directors, trustees, and key employees." Jt. Ex. 10.

f. A bill which would, among other goals, promote the nursing profession through education, recruiting, and the establishment of institutions to train nurses and provide existing nurses professional development. Jt. Ex. 11.

g. A bill which would facilitate and increase state payments to hospitals and impose a 5.14 revenue tax on hospitals, Jt. Ex. 12.

ii. UNAP's Vermont Lobbying.

a. A bill denominated as "Safe Patient Handling" by which hospitals would be obliged to create policies and procedures related to patient handling, including annual evaluation, notice posting, and the creation of "patient handling committees." Where a labor organization represented hospital employees, committee members would be selected by the union. Jt. Ex. 13.

b. A bill "prohibit[ing] mandatory overtime for certain health care employees of health care facilities," by which a hospital's license would be contingent on overtime being made voluntary. Further the bill would void all contracts where overtime was mandatory. Jt. Ex. 14. UNAP's own collective bargaining agreement for a Vermont bargaining unit did include a mandatory overtime provision. Jt.Ex. 15 at 14.

Charging Party Geary filed the original Unfair Labor Practice charge on November 23, 2009. An amended charge was filed on May 27, 2010 and a complaint issued on June 30, 2010. This complaint was partially dismissed on July 20, 2010. In dismissing, the Regional Director argued that the union could "pool" it's expenses for political activity and provide that service to its locals, in an arrangement similar to the one approved in *Locke v. Karass*, 555 U.S. 207 (2009). Charging Party's appeal of the partial dismissal was sustained on December 2, 2010. The charge was remanded to the Regional Director, who issued an amended complaint on December 29, 2010.

The Amended Complaint alleged:

> Paragraph 9(c): "...Respondent has failed to provide Geary and other similarly situated employees with evidence beyond a mere assertion that the financial disclosure in Exhibit B [Respondent's letter to *Beck* Objectors] was based on an independently verified audit."
>
> Paragraph 9(e): "The information referred to above in subparagraphs (9 c) and (d) is necessary for Geary and other similarly situated employees to evaluate Respondent's apportionment of dues and fees for representational and nonrepresentational activities."
>
> Paragraph 10: "Respondent has continued to seek from the employees named above...as a condition of their employment with the Employer, dues and fees for the nonrepresentational activity of lobbying."

A hearing took place before Administrative Law Judge Joel P. Biblowitz on February 14, 2011, in Boston. In advance of the hearing, Charging Party had properly served Respondent with a subpoena *duces tecum*. (Ex. A attached). At the hearing, the ALJ sustained Respondent's oral petition to revoke the subpoena. The Respondent stated that it had a "draft" version of the petition to revoke. Tr. 66:19-20. The Respondent did not serve Charging Party with the petition to revoke before, during, or after the hearing. The subpoena sought documents related to the nature of the work performed by the union's accountants, the union's lobbying expenses, and the union's procedures in formulating its *Beck* disclosures.

The ALJ granted the union's petition to revoke Charging Party's subpoena on the grounds that the subpoena sought documents beyond the scope of the complaint. The ALJ also sustained Respondent's objections as to the relevance of Charging Party's expert

witness in accounting procedures, auditing, and union financial reporting. With respect to revocation of the subpoena and the relevance of Charging Party's witnesses' proposed testimony, Counsel for the Acting General Counsel argued in support of Respondent Union objections and petition to revoke.

As well as revoking Charging Party's subpoena, the ALJ sustained Respondent's objections to the relevance of any testimony from Geary or her fellow employees regarding their experience of the union's *Beck* procedures and disclosures.

II. STANDARD OF REVIEW

It is well established that employees have a § 7 right to refrain from paying full union dues as a condition of employment and to refrain from paying those expenses not germane to collective bargaining. *Communication Workers v. Beck*, 487 U.S. 735 (1988). 29 U.S.C § 157. Employees who object to supporting the union's political, ideological and non-representational agenda need only pay reduced "financial core" fees equal to their *pro rata* share of a union's costs for collective bargaining, contract administration, and grievance adjustment and not for the Union's political activity. The right to pay only for the demonstrable representational expenses of the union when obliged to by a lawful union security clause, are absolute statutory (and constitutional) rights.

Since the above-mentioned rights are statutory in nature, the issue in this case is to be decided on the basis of the statutory rights of objecting nonmember employees under the Act. When Jeanette Geary exercised her statutory right to resign her membership

from Respondent Union, the Union had an obligation to protect her Section 7 rights.

In the alternative, *California Saw* held that a union's *Beck* obligations are to be assessed under the duty of fair representation standard. *California Saw,* 320 NLRB 224, 225 (1995). *See, Vaca v. Sipes*, 386 U.S. 171 (1967).

III. EXCEPTIONS

> **Exception 1**: ALJ Biblowitz erred when he revoked Charging Party's subpoena *duces tecum*. That subpoena sought documents pertaining to Respondent's financial accounting, including documents related to: preparation of *Beck* financial statements, accountants' statements and reports concerning the auditing work performed, and lobbying expenses. The requested documents were directly or potentially relevant to allegations raised in this case. (This exception relates to an evidentiary ruling during the hearing and not addressed in the ALJD).

Argument and Legal Authorities in Support of Exception 1:

A. The requested documents were relevant to all the issues raised in this case.

In an unfair labor practice proceeding, a petition to revoke a subpoena may be granted where it appears that the "the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid." NLRB Rules and Regulations, Sec. 102.31(b). 29 U.S.C. §161(1).

A party may not use the subpoena power to go on a "fishing expedition." *Burns International Security Services, Inc.*, 278 NLRB 565, 566 (1986). The Board has also revoked subpoenas that were "unreasonably broad," did not specify time limitations, put

substantial privacy rights at stake, and raised the issue of attorney-client privilege. *See, e.g., Brink's, Inc.*, 281 N.L.R.B. 74 (1986). A subpoena is properly quashed when overly burdensome and oppressive or motivated by "a mere hope" of unearthing something.

> The subpoena is properly quashed in part, however, as there is an absence of either claimed or apparent relevancy. Respondent's a mere hope of possibly finding a "smoking gun" is nothing more than a fishing expedition, rather than a request for the valid production of reasonably anticipated probative evidence.

Jackson Hospital Corp., 352 NLRB 194, 199 (2009).

Lastly, "[R]equests for subpoenas are to be "viewed sympathetically in order to ensure a fair hearing." *Retail Clerks International v. NLRB*, 366 F.2d 642, 125 U.S.App.D.C. 63, (D.C. Cir. 1966).

The Board reviews an administrative law judge's evidentiary rulings for an abuse of discretion. *Aladdin Gaming, LLC*, 345 NLRB 585, 587 (2005) ("[T]he Board affirms an evidentiary ruling of an administrative law judge unless it constitutes an abuse of discretion."), *enfd.* No. 05-75515, 2008 WL 216935 (D.C. Cir. Jan. 28, 2008).

Charging Party's subpoena was properly tailored to the two issues in this case: 1) Should the Board require unions to give nonmember objectors written proof that the union's *Beck* financial statements has been professionally audited by an independent accountant? 2) Should nonmember objectors pay for the union's lobbying expenses? At the hearing, the union, supported by Counsel for the Acting General Counsel argued that the subpoenaed documents were "beyond the scope of the complaint and therefore irrelevant." Tr. 68:6.

In ruling to quash Charging Party's subpoena, the ALJ may have relied on Counsel for the Acting General Counsel's inaccurate statement that Charging Party was "trying to find out whether the information they provided is accurate or not." Tr. 69:10-11. The Counsel for the Acting General Counsel and the union argued that Charging Party was on the proverbial "fishing expedition," looking for information regarding the accuracy of the various numbers in the *Beck* disclosures. Tr. 71:12-13.

At the hearing, Charging Party responded to Counsel for the Acting General Counsel and the union's allegation: "[T]he whole complaint is that the *Beck* objectors are –have to be– given a document which is reliable. What happened to create that document is all within the scope of the complaint... the auditing, how the auditor was retained, what the auditor did, that... is entirely relevant..." Tr. 70:12-19

In requesting documents which would have shed light on the work of the union's accounting professional with respect to the union's *Beck* financial disclosures, Charging Party was not seeking information which would prove the *accuracy* of the numbers but rather information which would elucidate the process by which the *Beck* financial statement was produced, and give an indication as to the reliability of that process.

B. The accountant's verification and audit are mentioned expressly in the complaint and included within its scope.

Items 1-5 of the subpoena target the "accountant's verification and audit" and are clearly relevant. Ex. 1. The Amended Complaint referred to the union's failure to provide "...evidence beyond a mere assertion that the financial disclosure in Exhibit B

[Respondent's letter to *Beck* Objectors] was based on an independently verified audit." Amended Complaint, ¶ 9(c). The requested documents would have been directly responsive to the complaint's allegation.

Subpoena Items 1 thru 12 targeted the means by which the Respondent produced its *Beck* disclosure. Each item was described with adequate specificity. Each item would have produced documents relevant to the union or its accountant's method for producing the *Beck* disclosure. At issue in this case are the reliability and conformity with professional accounting standards used to produce the *Beck* disclosures, not the accuracy of the numbers, checked against receipts, time-sheets, *etc.* Had they been disclosed, the requested documents would have revealed information about the accounting process and its reliability.

Here the ALJ further abused his discretion by allowing counsel for the Acting General Counsel to unjustifiably reduce the scope of the complaint to a simple demand for an accountant's cover letter. Respondent testified that the verification letter was not provided to *Beck* objectors because Respondent was unaware of an obligation to do so. Tr. 122:10-11. Nevertheless, the existence of this letter was never established. The letter was not mentioned in the complaint, or produced in evidence. The letter would clearly have been responsive to the subpoena, and obviously relevant. The terms of the subpoena were not "unreasonably broad" or burdensome, gave specific and reasonable time limitations, and did not put any privacy rights at stake nor raise the issue of attorney-client

privilege. *See, e.g.*, *Brink's, Inc.*, 281 NLRB 74 (1986). In any case, because the Respondent did not file a petition to revoke or serve Charging Party with its petition, no arguments other than those raised at trial were addressed.

ALJ Biblowitz eventually dismissed the allegation concerning the accountant's verification of the union's *Beck* disclosures because the Board had not ruled on the issue. Yet it was to clarify a union's legal obligations with respect to *Beck* disclosures that Charging Party's subpoena sought documents related to the process by which the financial disclosures given to *Beck* objectors were produced: What did the accountant audit? What was verified? Did an accountant review the numbers the union gives to the objectors? What guarantees did the process provide an objector that the numbers correspond to real life union expenses? The ALJ's decision to quash the subpoena has therefore prejudiced Charging Party's ability to support her case on the issue the ALJ was unwilling to rule on, preferring to defer to the Board.

Charging Party argued at the hearing that the Board, itself, has indicated an interest in re-thinking its approach to *Beck* requirements particularly as these relate to accounting. Tr. 127:11. *UFCW v. Barrett*, 355 NLRB No. 133 (August 26, 2010). There, Member Becker wrote separately:

> Member Becker writes separately to express the view that the Board should consider, in an appropriate case, whether the Board's holding in *Television Artists AFTRA (KGW Radio)*, 327 NLRB 474 (1999), should be read to permit the financial disclosure in a union's notice to be verified by an audit that relies on expenditure information provided by the union to the Department of Labor (DOL) in satisfaction of the union's financial disclosure obligations under the Labor Management Reporting and Disclosure Act. *See* 29 U.S.C. § 431. The Board held

> in *KGW Radio* that the auditor must independently verify "that the expenditures claimed were actually made" rather than accept "the representations of the union." *Id.* at 477. A union's statutorily required report to the DOL is more than the mere "representations of the union," however, as it must be signed by a union's president and treasurer (or corresponding principal officers) who are subject to criminal and civil penalties for false reporting and filing violations. *See* 29 U.S.C. §§ 431(b), 439, and 441. Sound Federal labor policy should seek, if possible, to reconcile the overlapping financial disclosure requirements that different Federal statutes impose on unions in order to fully fulfill the purposes of the disclosure requirements while not imposing unnecessary burdens on unions, particularly small, local unions, which may detract from their ability to fully and vigorously fulfill their duty to fairly represent employees.

The Board's expressed interest makes the disallowance of all Charging Party's proposed testimony a further abuse of discretion by the ALJ and the Board should remand this case for trial to fully develop the record. In the alternative, if the Board decides not to remand, Charging Party strongly contends that this case is **not** an appropriate case to reconsider the Board's disclosure requirements pursuant to Member Becker's separate opinion above. To use this case without a fully developed record would be a violation of Charging Party's due process rights.

Charging Party's subpoena sought documents explicitly mentioned in the Amended Complaint whose relevancy was claimed at the hearing and was apparent. Unlike the quashed subpoena in *Jackson Hospital Corp.*, Charging Party was not hoping to find a "smoking gun." Rather, the request sought the only documents which could have made the case as alleged in the Amended Complaint, and provided a basis for arguing the legal issues which the ALJ refused to rule on. By first quashing the subpoena and subsequently refusing to rule on the issue, the ALJ effectively prevented Charging

Party from presenting any argument at trial or through exceptions to the Board based on the "valid production of reasonably anticipated probative evidence." *Id.*

Counsel for the Acting General Counsel supported the Respondent Union's position that Charging Party's subpoena went beyond the scope of the complaint. Counsel for the Acting General Counsel seemed to undermine his own position, however, with other statements casting doubt on and even ridiculing the Acting General Counsel's position as "a little screwy."

> I'll just start with the General Counsel's position. Correctly or incorrectly, the General Counsel made a –you know, one of the problems with *Beck* is it's an accounting matter and no one at the Agency knows a thing about accounting." Tr. 82:17-21.
>
> That's that strange thing we're doing here. What he's [counsel for Charging Party] saying is look: [Exhibit] 2(c) is what they gave the poor *Beck* objectors. That's all the poor *Beck* objectors know.
>
> They don't have the audit. They have a digest made by – presumably made by the Union, which may be erroneous. It may be inaccurate. It may not reflect what's really in the
> audit.
>
> And that auditing document that General Counsel says has to go over to the *Beck* objectors verifies something they don't have in their hands. What they need is something that verifies this [the statement of chargeable and non-chargeable expenses]. But the General Counsel's position, which I have to say frankly I have trouble with myself –because we're saying give them a document that verifies something the accountant never saw.
> That's – to my mind doesn't make too much sense.
> That's the real issue. But we control the complaint. If we want to make a claim that's a little screwy I guess we get to do it." Tr. 83:5-22; 85:8-10.

C. The subpoena sought documents related to the union's Beck financial disclosure and lobbying activities.

Items 1 thru 12 of the subpoena related to the Respondent's *Beck* financial statement. The requested documents were clearly relevant as discussed previously. Items 13 thru 16 related to the Respondent's lobbying activities and its accounting thereof. The second major issue in this case concerns the union's lobbying activities. Therefore, its record-keeping regarding those activities is relevant. Respondent alluded to its use of these records. Tr. 28:1

Items 17 thru 26 related to the Respondent's local affiliate's financial disclosures which were also supposedly audited by an accountant. On their face, these union disclosures raised questions, partly because they did not constitute any type of financial statement based on any audit. All these documents were relevant or potentially relevant because at issue is the reliability of the union's accounting processes, not the accuracy of its calculations.

D. The ALJ abused his discretion in quashing the subpoena.

In granting the union's petition to revoke the ALJ abused his discretion. The subpoena was narrowly tailored to produce relevant evidence. The evidence would certainly have helped make Charging Party's case. The Acting General Counsel's theory regarding its own complaint was unclear and "screwy," according to its own counsel. When the ALJ refused to rule on the issue, he prejudiced Charging Party since the quashing of the subpoena left Charging Party without any means of making her case. The

union's breakdown of its expenses was not verified by an independent auditor and therefore provided no guarantees to the *Beck* objector regarding the breakdown's accuracy.

> **Exception 2.** ALJ Biblowitz erred when he disallowed Charging Party's proposed testimony from employee *Beck* objectors, sustaining Respondent's objection as to relevance. The testimony would have been relevant to the experience and understanding of the union's financial statements and *Beck* objector policy by the employees, themselves. The testimony would have been directly relevant to the *Beck* disclosure issues raised in the case. (This exception relates to an evidentiary ruling during the hearing and not addressed in the ALJD.)

Argument and Legal Authorities in Support of Exception 2:

For reasons cited in the previous section, ALJ Biblowitz erred and abused his discretion when he disallowed Charging Party's proposed testimony from employee *Beck* objectors. Charging Party and her fellow workers have exercised their right to resign and object under *Beck*. The union provided these employees with a financial statement and provided opportunity to challenge the individual items in the financial statements. The Amended Complaint alleged: "Respondent has failed to provide Geary and other similarly situated employees with evidence beyond a mere assertion that the financial disclosure... was based on an independently verified audit."

In testifying about the union's disclosures, both written and oral, the *Beck* objectors who are the users of these financial statements could have provided relevant testimony concerning the union's transparency and the comprehensibility of the disclosures. The whole *Beck* scheme is geared toward protecting employees' § 7 rights.

The employees in question received the disclosures and attempted to question the union concerning their reliability. They also questioned union representatives concerning how its political activity was germane to their representation. Had they been given an opportunity, their testimony would have been relevant to the overall question of the transparency and coherence of the union's *Beck* policy and disclosures. The ALJ incorrectly ruled that testimony from the employees regarding the disclosures was irrelevant and beyond the scope of the complaint.

> **Exception 3**: ALJ Biblowitz erred when he disallowed Charging Party's expert testimony, sustaining Respondent's objection as to its relevance. The expert testimony would have been directly relevant to issues raised in the case, including: general accounting principles, corporate financial audits, *Beck* financial statements in general, and labor union accounting practices to comply with *Beck* disclosure obligations. Specifically, the testimony would have been relevant to Respondent's accounting practices and its *Beck* compliance at issue in this case, including the accounting of its lobbying expenses.

Argument and Legal Authorities in Support of Exception 3:

A. The proposed expert testimony would have addressed all issues in this case.

As stated above, an ALJ's ruling on evidentiary issues is reviewed by the Board for an abuse of discretion. *See*, *Aladdin Gaming, LLC*, 345 NLRB 585, 587 (2005), *enfd.* No. 05-75515, 2008 WL 216935 (D.C. Cir. Jan. 28, 2008).

At the hearing, Charging Party called Irving Ross to provide expert testimony concerning general accounting principles and practices and the Respondent's particular practices, as evidenced by their *Beck* disclosures. *See*, Charging Party's "Rejected"

Exhibit 1 (attached as Ex. 1).

The expert's background, experience, knowledge, and understanding of the issues in this case would have provided highly relevant, so as not to say indispensable testimony regarding the Respondent's accounting practices and what financial disclosures would be necessary to evaluate the apportionment of dues into representational and nonrepresentational activities. The expert could have usefully commented on all aspects of the purported work done by the union's "independent accountant." The expert could have provided relevant testimony concerning the union's method of accounting for its lobbying expenses. This testimony would not have concerned the accuracy of the numbers, but the legitimacy and reliability of the accounting process.

The Amended Complaint demanded that the union provide "more than a mere assertion" concerning its expenses. Since no verification or proof of the auditor's work was offered into evidence by the union, the Charging Party's expert would have been the sole source of testimony concerning accounting in general, union accounting for purposes of *Beck* disclosures in particular, and more specifically, the accounting practices of Respondent. If it is admitted that the purpose of the NLRB's *Beck* regime is provide the objector with sufficient information "to make their own judgment about whether to challenge the Union's determination," *Penrod v. NLRB*, 203 F3d 4, 46 (D.C. Cir. 2000), then the expert testimony proposed by Charging Party would have been the sole source of information concerning the reliability of the Respondent's *Beck* disclosures.

B. The issues and case law demand expert testimony.

A review of the relevant case law demonstrates just how important the expert testimony rejected as irrelevant by the ALJ would have been for this case. As counsel for the Acting General Counsel stated: "Correctly or incorrectly, the Acting General Counsel made a –you know, one of the problems with *Beck* is it's an accounting matter and no one at the Agency knows a thing about accounting." Tr. 82:17-21. The expert testimony here would have been invaluable in clarifying and developing the Board's practice with regard to accounting issues.

With respect to audits for *Beck* disclosure purposes, *Aftra (KGW Radio)*, 327 NLRB 474, 477 (1999) insisted on a more meaningful standard than had been applied before: "[R]equiring an audit within the generally accepted meaning of the term, in which the auditor independently verifies that the expenditures claimed were actually made rather than accepts the representations of the Union, is consistent with the plain language, purpose, and intent of *California Saw*."

Here, had Charging Party been given an opportunity, expert testimony would have explained:

- "the generally accepted meaning of the term" audit;
- the meaning of "independently verifies";
- the plain language, purpose and intent of *California Saw*, which included the following instructions

> "[I]n the NLRA context, '*Hudson* requires only that the usual

function of an auditor be performed, *i.e.*, to determine the expenses claimed were in fact made.'" *California Saw* at 241, citing *Price v. Auto Workers UAW*, 927 F.2d 88 (2d Cir. 1991).

"The [*Hudson*] Court's notice holding was premised on basic considerations of fairness, which clearly implicate a union's statutory obligations.... The [*Hudson*] Court's explicit articulation of this broader rationale demonstrates that the Court's concern that nonunion employees not be left 'in the dark about the source of their agency fee' was not entirely limited to the constitutional context but is also a relevant concern in the context of a private sector union's duty of fair representation." *Califonia Saw* at 233 (citation omitted); *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986);

- testimony showing how the UNAP's *Beck* disclosure provided merely the "representations of the Union" regarding its expenses. *Aftra (KGW Radio)* at 477 .

In *UFCW (Safeway)*, 353 NLRB No. 47 (October 31, 2008)(aff'd by three member NRLB pursuant to *New Process Steel, L.P. v. NLRB*, 130 S. Ct. 2635(2010), the Board rejected as insufficient for *Beck* purposes the union's representation that an accountant had reviewed the information in the union's *Beck* disclosures. Rather, the court demanded some verification from the auditor that the "expenses claimed were actually made." *Id.* Charging Party's expert would have shed invaluable light on the specialized terms used by the Board: "reviewed," "some verification," "the auditor."

Here, the union admitted that its auditor did **not** review the chargeable and non-chargeable expenses. Brooks at Tr. 123:24-25. There is no way to achieve the Act's purposes in this case without the expert testimony concerning accounting. The union did

not provide *Beck* objectors with any statement from any auditor related to whatever audit process had taken place. The *Beck* objectors in this case were therefore left with *less* information and *less* assurance than the objectors in *Safeway* and *KGW Radio*, where the disclosures were ruled inadequate.

The ALJ abused his discretion by disallowing such obviously relevant and significant testimony which could help shape the court's understanding of the issues. Particularly in light of the ALJ's subsequent refusal to rule on the issue, his disallowing of the expert testimony prejudiced Charging Party's ability to present a full case to the Board on exceptions.

> **Exception 4**: ALJ Biblowitz erred by granting Respondent's purported "draft" petition to revoke Charging Party's subpoena *duces tecum* because the petition to revoke was never served on the Charging Party in violation of NLRB Rules and Regulations Sec. 102.31(b) and relevant case law. The ruling prejudiced Charging Party by depriving her of relevant documents to support her case, particularly since the ALJ refused to rule on the *Beck* disclosure issue. (This exception relates to an evidentiary ruling during the hearing and not addressed in the ALJD).

Argument and Legal Authorities in Support of Exception 4:

> *A.* *"All petitions to revoke subpoenas shall be served on the party at whose request the petition was issued."* NLRB Rules and Regulations, Sec. 102.31(b).

By not filing a timely petition to revoke within five days of receiving the subpoena, the Respondent lost its ability to contest the subpoena.

> A careful reading of Section 11(1) of the National Labor Relations Act as amended, 29 U.S.C.A. § 151 et seq., and Section 102.31(b) of the Board's Rules and Regulations, together with the surrounding phraseology, discloses, in the opinion of this court, that the five-day limitation was intended to apply to

> subpoenas *duces tecum* calling for the production of documentary evidence rather than subpoenas ad testificandum not calling for such production.

NLRB v. Gemalo, 130 F.Supp. 500, 501 (1955).

The NLRB Division of Judges Bench Book, Sec. 8-220 cites *Detroit Newspapers Agency*, 326 NLRB 700, 751 fn. 25 (1998), *enf. denied on other grounds* 216 F.3d 109 (D.C. Cir. 2000). There,

> [T]he Board, in an unpublished order on interlocutory appeal during the trial, reversed a judge who refused to apply the 5-day rule because, inter alia, the subpoenaed material was covered by the attorney client privilege. A panel majority of the Board held that the judge "abused his discretion . . . because the Respondent did not file a proper motion or petition to revoke within 5 days."

In cases where the party aggrieved by the granting of a petition to revoke a subpoena has not been prejudiced by the adverse ruling, the Board will not overturn the ALJ's decision to quash. *See, e.g., NLRB v. Randall P. Kane, Inc.*, 581 F. 2d 215 (9th Cir. 1978). Here the ALJ's ruling prejudices Charging Party by preventing her from fully making her case.

Prior to the hearing in the present case, Charging Party served Respondent with a subpoena *duces tecum*. Ex. 2. At the hearing, realizing that Respondent had arrived without a responsive witness or documents, Charging Party raised the subpoena issue with the ALJ. Tr. 66:9. In answer, Respondent's counsel stated that he "had drafted a petition to revoke. And I have that with me today." Tr. 66:19-20. Neither the alleged draft petition nor any other was ever served on the Charging Party, in clear violation of NLRB Rule and Regulation 102.31(b) which states that "all" such petitions "shall be served,"

"within five days" on the appropriate party. The Respondent did not comply.

B. Failure to timely file the petition to revoke the subpoena has prejudiced charging party's ability to respond to objections.

Charging Party contends that the discussion at the hearing concerning the subpoena was too limited in scope. Counsel for the Acting General Counsel interposed his own objections in support of a subpoena which did not concern the Acting General Counsel. The Acting General Counsel twice mischaracterized Charging Party's intent with respect to the subpoenaed documents. First as "trying to find out about whether the information they provided is accurate or not," and second, as "a sheer fishing expedition in order detect that there was some lobbying expense which we're not as yet aware of." Tr. 69:9; 71:11-13. As there was no opportunity to respond to Respondent's specific arguments contained in a properly served petition to revoke, the ALJ evidently allowed himself to be swayed by counsel for the Acting General Counsel's unfounded allegations concerning Charging Party's subpoena.

> **Exception 5:** ALJ Biblowitz erred when he justified his refusal to rule on the legal question regarding verification of *Beck* financial statements on the grounds that the NLRB had not yet ruled on the issue. By contrast, on the issue regarding the chargeability of certain lobbying, the ALJ did rule, despite the lack of a prior Board decision on the issue. Using existing Board and federal circuit case law the ALJ should have ruled that the Respondent was required to provide *Beck* objectors with proof of a verified audit of the *Beck* disclosures provided to them. Using existing binding Supreme Court and federal circuit precedent, the ALJ should have ruled that all the lobbying at issue was not chargeable to nonmember *Beck* objectors. (This exception relates to: ALJD 4:50-53; 5:1-6:48).

Argument and Legal Authorities in Support of Exception 5:

A. ALJ Biblowitz erred when he refused to rule on the legal question of verification of Beck financial statements on the grounds that the NLRB had not yet ruled on the issue.

In unfair labor practice proceedings, ALJ's are not bound to defer judgment to the Board on those issues where the Board has not ruled. The NLRB's Bench Book states: "[The] judge is bound to apply established Board precedent which neither the Board nor the Supreme Court has reversed, notwithstanding contrary decisions by courts of appeals." NLRB Bench Book Sec. 11-300. In this very case, ALJ Biblowitz ruled on an issue that the Board has been silent on, namely, the chargeability of certain lobbying to nonmember objectors. With respect to the verification issue, however, the ALJ merely refused to rule and made no attempt to apply any authority. The ALJ did cite a public sector case, *Cummings v. Connell*, 316 F.3d 886, (9th Cir. 2003) but then refused to apply its holding. Since *Cummings* relied entirely on *Hudson*, and since the Board in *California Saw* fully incorporated *Hudson* into Board law, the ALJ should have followed suit. *See* discussion *supra* at 22 concerning *California Saw's* adoption of *Hudson*. The ALJ wrongly dismissed the verification allegation on the grounds that *Cummings* was a public sector case and not binding authority.

The ALJ further erred by not relying on existing Board law concerning the verification issue. *Penrod v. NLRB* 203 F.3d at 46 is one such authority. There, verification was found necessary to give nonmembers sufficient information to make

"their own judgment about whether to challenge the Union's determination."

Another recent Board decision raising the verification issue is UFCW (Safeway), 353 NLRB No. 47 (October 31, 2008) (affirmed by three member NLRB pursuant to *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635 (2010))("*Safeway*") which re-stated the holding in *KGW Radio*:

> *KGW Radio* requires that an audit must be performed of union's expenditure information provide to *Beck* objectors, and the auditor independently verify that the expenditures claimed were actually made rather than accept the representations of the union.

Safeway at 4 slip op.

In *Safeway* the Board rejected as insufficient for *Beck* purposes the union's representation that an accountant had reviewed the information in the union's *Beck* disclosures. Rather, the court demanded some verification from the auditor that the "expenses claimed were actually made." *Id.*

The ALJ could have reasonably relied on Board law or other federal courts of appeals cases, using private or public sector precedent, in which the Board adopted the relevant principles and reasoning, *e.g.*, *California Saw* adopting *Hudson*.

B. The ALJ applied an inconsistent standard when he ruled on the issue of chargeability of certain lobbying, despite the lack of a prior Board decision on the issue.

As noted above, the ALJ refused to employ the *Cummings* holding on the verification requirement because it was a public sector case. Nevertheless, the ALJ relied solely on public sector and another non-Board precedent in ruling on the chargeability of

certain lobbying to *Beck* objectors. The ALJ erred by relying on cases involving very different legal contexts than are present here. For the discrete legal issue of chargeability of union's lobbying for purposes of a hospital merger or to obtain more money for hospitals, there is no Board (or any other) authority.

In his decision, ALJ Biblowitz relied solely on three non-NLRB cases: *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507 (1991) (public sector), *Locke v. Karass*, 555 U.S. 207 (2009) (public sector), and *Fell v. Independent Ass'n of Continental Pilots*, 26 F. Supp.2d 1272 (1998)(Railway Labor Act). *Lehnert* narrowly limited the chargeability of lobbying to nonmembers of a teachers union to that lobbying designed to implement or ratify a contract. *Locke* concerned the chargeability of litigation costs for a teachers union and did not concern lobbying. *Fell* dealt with the chargeability to nonmembers of the costs of a union merging with another union. According to the ALJ's standard, absent a Board ruling he should have refrained from ruling on the issue of whether a union may charge objectors for the legislative activity at issue in this case: *i.e.*, a law which "would have given the Union some say in whether hospitals in the state could merge their operations, which would have had an effect on the bargaining strength and position of the parties". ALJD at 6:35. Or "which would have given an additional $1,300,000 to two hospitals whose employees the union represents and would have loosened those employers' purse strings to the benefit of the employees." ALJD 6:37. No Board case expands chargeability to include lobbying for laws which may inure to the employees' benefit. "Loosen[ing] the

employers' purse strings" is not an existing Board standard to judge the chargeability of lobbying to nonmember objectors. ALJD 6:38

The misapplication to the present case of the holdings in *Lehnert*, *Locke*, and *Fell* is discussed in the following section D below. *Infra* at 34.

C. Using existing Board and federal circuit case authority the ALJ should have ruled that the Respondent was required to provide Beck objectors with a breakdown of expenses verified by an independent audit.

As has been stated, the union's breakdown of its expenses was not verified by an independent audit and therefore provided no guarantees to the *Beck* objector regarding the breakdown's accuracy.

In this case, the Acting General Counsel proposes a meaningless standard which provides no indicia of reliability to the *Beck* objector concerning the financial statement.

Aftra (KGW Radio), 327 NLRB 474, 477 (1999) insisted on a more meaningful standard: "[R]equiring an audit within the generally accepted meaning of the term, in which the auditor independently verifies that the expenditures claimed were actually made rather than accepts the representations of the Union, is consistent with the plain language, purpose, and intent of *California Saw*." As argued above, had Charging Party's expert witness been allowed to testify, the court would have heard expert testimony regarding "the generally accepted meaning of the term" audit. The testimony would have exposed the Respondent's *Beck* disclosures not as fraudulent or inaccurate, but as *unreliable*, providing, merely the "representations of the Union" regarding its expenses.

Verification by an independent auditor is required to give nonmembers "assurance that the reviewed books... really do reflect the concrete world transactions to which they refer." *Prescott v. County of El Dorado*, 177 F.3d 1102, 1107 (9th Cir. 1999), remanded, 528 U.S. 1111, reinstated in relevant part, 204 F. 3d 984 (2000); *see also Otto v. Pa. State Educ. Ass'n*, 330 F3d 125, 131 (3d Cir. 2003)("'[T]he purpose of requiring verification in the [Hudson] notice is to give the nonmembers some prior assurance that the [fair-share] fee was properly calculated...'")(brackets in original)(quoting *Hohe v. Casey*, 956 F2d 399, 415 (3d Cir. 1992).

Verification is also necessary to give nonmembers sufficient information to make "their own judgment about whether to challenge the Union's determination." *Penrod v. NLRB*, 203 F.3d 4, 46 (D.C. Cir. 2000). As one court stated:

> The whole point of providing the notice of nonmembers was to give them enough information to decide whether to challenge the fair share fee. That would require a breakdown between chargeable and non-chargeable costs. The Supreme Court has said that the necessary disclosure must include verification by an independent auditor. Hence it must have meant verification of the breakdown. **Verification of the financial statements occur too early in the process to be of help.** It would not provide any reassurance concerning the allocation of costs and enable a nonmember to decide whether to contest the fee or not.

Hohe v. Casey, 727 F. Supp. 163, 166-167 (M.D. Pa. 1989) (emphasis added), final judgment, 136 L.R.R.M. (BNA) 2198 (M.D. Pa. 1990), *aff'd in part, rev'd in part*, 956 F.2d 399 (3d Cir. 1992).[4]

In *Wessel v. City of Albuquerque*, 299 F.3d 1186 (10th Cir. 2002), the original

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[4]The issue was not appealed but the Third Circuit agreed with the District Court's reasoning. *Hohe*, 956 F 2d at 415 & n.9.

Hudson notice included the Union's schedules of expenses and a statement that this was "audited." However, the auditors' report and notes to the schedules were not included. The U.S. Court of Appeals for the Tenth Circuit concluded that

> without the auditor's reports, nonmembers could not have sufficient information to make such a determination. A simple statement that the Union's expenses were audited conveys minimal, if any, assistance to nonmembers attempting to decide whether to challenge the Union's determination. We hold that Hudson contemplates, in the notice, "a report expressing the auditor's opinion on the schedule."

The ALJ did cite *Cummings v. Connell*, 316 F.3d 886, 891 (9th Cir. 2003) but refused to apply it. *Cummings* directly addressed the issue of what had to be provided to the nonmember objector to give meaning to his or her objection.

> The Union's June 1999 notice essentially required the plaintiffs either to accept that the expenditures were indeed audited or to go to the trouble of requesting a copy of the audit report to verify the Union's summary. The purpose of the *Hudson* notice is to allow nonmembers to "gauge the propriety of the union's fee," 475 U.S. at 306, 106 S.Ct. 1066, and the Court clearly contemplated that such a determination would be based on information contained in that notice, *see id.* at 307 n. 18, 106 S.Ct. 1066. In light of the purposes of a *Hudson* notice, the language in *Hudson* itself, and the caselaw from this and other circuits, we agree with the district court that the representation in the June 1999 notice that the figures had been audited was not sufficient under *Hudson.*
>
> *Cummings v. Connell*, 316 F.3d 886, 891 (9th Cir. 2003)

No NLRB cases have held to the contrary of this authority from the Board and federal appellate courts. To the contrary, UFCW(Safeway), 353 NLRB No. 47 (October 31, 2008)(affirmed by three member NLRB pursuant to *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635 (2010))("Safeway") is a Board case which accords with federal circuit

laws. *See supra* at 28, 32.

In *Safeway* the Board rejected as insufficient for *Beck* purposes the union's representation that an accountant had reviewed the information in the union's *Beck* disclosures. Rather, the court demanded some verification from the auditor that the "expenses claimed were actually made." *Id.*

Any organization, however large, will need to conduct an audit to keep track of its expenses, and other financial matters. That the union here was audited is irrelevant to its legal obligation to make full disclosure to *Beck* objectors of its chargeable and non-chargeable expenses. *Beck* requires a special audit peculiar to the rights of *Beck* objectors, namely an audit of its chargeable and non-chargeable expenses. *Beck* objectors need that reassurance to protect their important statutory and constitutional rights. The verification of an independent audit goes some way to providing objecting employees with some assurance that the financial breakdown designed to protect his rights is in some measure, reliable.

In summary, the financial statements that the union produced for *Beck* objectors in this case **were not audited**. Brooks at Tr. 123:24-25. Rather, the *Beck* objectors were forced to "accept[s] the representations of the Union" and take it on trust that the expenses stated were actually made as the user of the financial statement. Charging Party Geary has absolutely no reason to believe that the financial statements given to her "really do reflect the concrete world transactions to which they refer." *Aftra (KGW Radio)* at 477;

Prescott at 1107.

D. Using existing binding Supreme Court and federal circuit precedent, the ALJ should have ruled that all the lobbying at issue was not chargeable to nonmember Beck objectors.

1. Lobbying and legislative activity is not chargeable to *Beck* objectors.

Following *Lehnert v. Ferris Faculty Assoc., et al.*, 500 U.S. 507 (1991) lobbying is only legally chargeable to objecting nonmembers if it is for the ratification or implementation of the contract. Lobbying does not become chargeable to nonmembers if it "directly impacts the bargaining unit" or addresses "mandatory subjects of bargaining," as the Respondent apparently argues.

Lehnert was a public sector case. The standard for determining the chargeability of lobbying in the private sector is stricter yet, since no private sector union will depend on the government to ratify or implement its collective bargaining agreement. In any event, that is not the type of lobbying the Respondent here is charging to nonmembers.

In the private sector, therefore, lobbying activities are *per se* non-chargeable to *Beck* objectors. The "*Beck* and *Ellis* holdings foreclose the exaction of mandatory agency fees for [legislative] activities." *Abrams v. Communications Workers of America*, 59 F.3d 1373, 1380 (D.C. Cir. 1995); *accord Beckett v. Air Line Pilots Ass'n*, 59 F.3d 1276, 1281 (D.C. Cir. 1995) (Silberman, J., concurring); *see Ellis v. Railway Clerks*, 466 U.S. 435, 447 (1984); *Machinists v. Street*, 367 U.S. 740, 768-9 & n.17 (1961). *Street* held that objectors "could not be burdened with any part of the union's expenditures in support of

political or ideological causes." That ban includes "support for or opposition to proposed, pending, or existing governmental executive orders, policies, or decisions." *Ellis v. Railway Clerks*, 91 L.R.R.M (BNA) 2339, 2342-43 (1976)(interlocutory summary judgment), *incorporated*, 108 L.R.R.M. 2648 (S.D. Cal. 1980), *aff'd in part, rev'd in part*, 685 F.2d 1065 (9th Cir. 1982), *aff'd in part, rev'd in part*, 466 U.S. 435 (1984).

Further broadening these general parameters of non-chargeable expenses, *Lehnert* held that "[P]ublic relations activities" were non-chargeable, because they "are not sufficiently related to the union's collective bargaining functions" and "impose[] a substantially greater burden on First Amendment rights than do the latter." *Lehnert,* 500 U.S. at 528-29; *accord id* at 557-559 (Scalia, J., concurring).

In *Lehnert* the First Amendment rights of public sector employees were implicated when they were charged for political activity. *Lehnert's* standard is properly applied to the private sector. The lobbying and legislative activity in question in *Lehnert* dealt with securing funding for public education. *Lehnert* at 528. The Court found that the connection to general funding was not sufficiently related to the ratification or implementation of the collective bargaining agreement. Indeed, in the private sector, the legislature is unlikely to have the same role with regard to ratification and implementation of a contract as it does in the public sector. *Lehnert* held that expenses for "lobbying, electoral, or other union political activities outside the limited context of contract ratification and implementation" were not chargeable to nonmembers. *Lehnert* at 522.

The lobbying which the ALJ in this case found chargeable related to: 1) giving the union influence when hospitals merge, and 2) securing money for hospitals where the union represented workers. None of this lobbying concerned the "ratification" or "implementation" of the contract. It was lobbying for general funding or on topics of general nature, related to the employees' workplace, and possibly inuring to their benefit, but not directly related to the ratification and implementation of the collective bargaining agreement.

2. The "*Johnson Controls*" Exceptions Do Not Apply.

In *Johnson Controls*, 329 NLRB 543 (1999), the Board ruled that some union expenses incurred in the process of engaging some branches of government on behalf of represented employees were chargeable to *Beck* objectors. For example, legal representation of individual employees before government agency investigations was deemed a function of the collective bargaining representative. Similarly, education programs designed to explain licensing requirements was deemed representational. Lastly, participation in public comment on proposed regulation was also deemed germane to collective bargaining role. Although it is the principal Board case on point, the ALJ did not cite *Johnson Controls*.

The ALJ erred in ruling that some of the union's legislative activity was chargeable to *Beck* objectors as long as the looked for legislative outcome potentially benefited at least some represented employees. None of the union's stated lobbying

activities fits into the *Johnson Controls* categories, unless the rule of germaneness to collective bargaining is broadened to include all lobbying that is theoretically related to worker representation.

First of all, none of UNAP's lobbying expenses relate to the legal representation of any individual employees.

Second, several of UNAP's lobbying efforts are related to placing the union in a position of influence within a state-sanctioned body. This lobbying aimed at improving the union's leverage within the system is not chargeable under *Johnson Controls* or elsewhere.

The ALJ apparently holds that wherever a piece of proposed legislation might have some positive impact on represented employees or the nursing profession in general, such lobbying is chargeable. This standard is not found in *Johnson Controls* or in other authority. The union's efforts to obtain public money for a hospital so that the hospital might get more money would not be chargeable, even if the "excess" money was then available to represented employees. Jt. Ex. 8 and 14; R. Ex. 4.

The Respondent's witness statements regarding UNAP's lobbying demonstrate that UNAP decided what lobbying to conduct based on whether the collective bargaining agreement purportedly required the parties to lobby in pursuit of legislative goals, and then charged nonmembers for all such lobbying. Tr. 115:17-19. This is not permissible under *Johnson Controls* or any other legal authority.

The union's lobbying efforts were prioritized based on what "will directly impact our members' jobs, working conditions, job security and the like." Brooks at Tr. 63:21-23. On that basis, apparently, the union deems the lobbying chargeable to nonmember objectors, since the legislative outcomes could potentially benefit all employees, member or nonmember, represented or not. This concept of chargeability applies to the collective bargaining agent **in its collective bargaining activity with the Employer**, and not to sundry efforts of one of the collective bargaining party's efforts with third parties, especially when it comes to political activity.

Lastly, under *Johnson Controls*, merely because proposed legislation might result in funding for the employer, it does not follow that such activity is chargeable. In this regard, UNAP's lobbying expenses in promoting a bill which would facilitate and increase state payments to hospitals and impose a "5.14 revenue tax" on hospitals would not be chargeable. Jt. Ex. 12.

Save for the exceptional instances approved by *Johnson Controls*, the correct standard for judging the chargeability of lobbying is whether it relates to the ratification and implementation of the contract. *Lehnert* made no mention that lobbying on a "subject of mandatory bargaining" or "germane to the union's duty as the collective bargaining representative" was properly chargeable to objectors. ALJD 6:32

> **Exception 6**: ALJ Biblowitz erred when he ruled that relevant case law concerning union disclosure obligations to nonmember objector employees in the public sector did not apply to the private sector employees in this case. On the issue of the chargeabillity to nonmember objectors of lobbying, however, the ALJ applied

authority from a case involving public sector employees to the private sector employees in this case. The ALJ should have found that none of the lobbying at issue in this case was chargeable to nonmember objectors. (This exception relates to: ALJD 4:50; 5:1-6:48).

Argument and Legal Authorities in Support of Exception 6:

A. ALJ Biblowitz erred when he ruled that relevant case law concerning union disclosure obligations to nonmember objector employees in the public sector did not apply to the private sector employees in this case.

This exception focuses solely on the inconsistent standard used by the ALJ, namely, that the holdings in cases involving public sector employees do not apply in NLRB cases. The legal arguments are presented in Section 5. *See supra* at 27.

Exception 7: ALJ Biblowitz erred by expanding the narrow holding in *Locke* v. *Karass*, 555 U.S. 207 (2009), a public sector case on the chargeability to nonmember objectors of litigation expenses, to include certain lobbying expenses. In doing so, the ALJ ignored *Lehnert v. Ferris Faculty Ass'n,* 500 U.S. 507 (1991), as well other authority limiting the chargeability of lobbying to those expenses incurred in "the ratification or implementation of a dissenter's collective-bargaining agreement." The ALJ erred in relying on a case that did not involve the chargeability of lobbying. Using existing Supreme Court and federal circuit case law, the ALJ should have ruled in favor of *Beck* objectors that none of the lobbying at issue in this case was chargeable to them. (This exception relates to: ALJD 5:26-6:48).

Argument and Legal Authorities in Support of Exception 7:

A. ALJ Biblowitz erred by expanding the narrow holding in Locke, a public sector case on the chargeability to nonmember objectors of litigation expenses, to include certain lobbying expenses.

Charging nonmember objectors for lobbying done on behalf of other bargaining units has no support in *Locke* or elsewhere in case law.

1. *Locke* is limited to the chargeability of certain Litigation Under Limited Circumstances.

Locke dealt exclusively with the chargeability of extra-unit litigation costs to nonmember objectors in a different bargaining unit. *Locke* made no mention of a general "pooling" principle, applicable to all types of union expenses. There is no suggestion in *Locke* that any union expense except litigation was under consideration, nor that the principle could reasonably be extended to cover political and legislative expenditures. Indeed, in the second paragraph of the unanimous opinion, *Locke* expressly *prohibited* charging nonmember objectors for litigation costs when such litigation dealt with "political activities." *Locke* at 802.

In *Locke*, the union's scheme for charging nonmembers in one local for the litigation costs of another local was deemed permissible only if "the litigation concerns activities that are of a chargeable kind." *Id.* The local could "not charge nonmembers for the portion of the national litigation costs that concerns activities of a kind that would not normally be chargeable, such as political, public relations, or lobbying activities." *Id.*

2. *Lehnert* Prohibits *Locke* "Pooling" For Political And Legislative Costs.

Where *Locke* prohibited charging for litigation related to politics and lobbying, *Lehnert* explicity rejected the lawfulness of a pooling arrangement for legislative expenses. Although *Lehnert* did not use the word "pooling," the union arrangement which was struck down in *Lehnert* resembled the arrangement here, in that lobbying expenses

were for the supposed benefit of one unit and being charged to nonmembers in other units. ALJD 6:1-2.

The lobbying expenses at issue in *Lehnert* were for a "program designed to secure funds for public education in Michigan," 500 U.S. at 527, funds that could have been used by many schools in which the teachers were represented by MEA locals (in fact, the record showed that the program was to raise funds for K-12 public schools, not higher education, and the plaintiffs were college professors). However, the Court (8-1, Marshall, dissenting) held that, because "[n]one of these activities was shown to be oriented toward the ratificaion or implementation of *petitioners'* collective-bargaining agreement, . . . none may be supported through the funds of objecting employees." *Id.* (opinion of Blackmun, J.) (emphasis added); *see id.* at 559 (opinion of Scalia, J.) ("I agree that the challenged lobbying expenses are nonchargeable.").

The ALJ erred when he ruled that the Rhode Island bills on which Richard Brooks lobbied were chargeable under *Lehnert*, because neither concerned ratification or implementation of the Kent Hospital collective bargaining agreement. That the lobbying concerned subjects which "directly impacted the bargaining unit at Kent Hospital," is irrelevant. If that were the standard, "that extension of the *Lehnert* exception would swallow the *Lehnert* rule," *Miller v. Air Line Pilots Association,* F. 3d 1415, 1422 (D.C. Cir. 1997). The lobbying for a revenue tax on hospitals closely resembles the lobbying for "financial support of the employee's profession" held to be constitutionally non-

chargeable in *Lehnert*, 500 U.S. at 522, 527. The lobbying for a bill regulating hospital mergers is lawfully non-chargeable for the same reason that lobbying for airline safety regulations were held nonchargeable in *Miller*, 108 F.3d at 1422-23.

C. The ALJ erred in relying on a public sector case that did not involve the chargeability of lobbying.

The ALJ's reliance on *Fell* is inapposite. The present case asks the question: can a union charge nonmember objectors for its lobbying activity on bills related to hospital mergers and funding. *Fell* by contrast asked the question: can a union charge nonmembers for the cost of its own merger with another union? Apart from both cases involving mergers of large organizations, and whether nonmember objectors may be charged, the legal issues are completely different. In this case the issue is the chargeability of lobbying, not the chargeability of mergers. *Fell* involved the chargeability of one union merging with another.

D. All Lobbying Should Be Non-Chargeable.

In *Johnson Controls*, the Board allowed a union to charge nonmember objectors for the costs of some lobbying. Here, the ALJ attempts to expand the *Johnson Controls* standard. Charging Party contends that the ALJ was in error in expanding that standard. Charging Party further contends, that contrary to the ALJ and the Board, under *Lehnert* **all** lobbying should be non-chargeable to nonmembers. This is because all nonmembers have a fundamental constitutional and statutory right not to be forced to financially support another party's political speech. The exception in *Lehnert* –only lobbying for

ratification or implementation of the collective bargaining agreement is chargeable– cannot logically be applied in the private sector since a legislature will never have a role in the ratification or implementation of a private sector employer's contract.

Charging Party argues that the *Johnson Controls* standard, and the ALJ's expansion of it, will work as the "exception which swallows the rule." *Miller*, F.3d at 1415, 1422. When the ALJ applied his ultra-permissive standard that "loosen[ing] the employer's purse strings" constituted permissibly chargeable lobbying, he swallowed the rule whole.

IV. CONCLUSION

Where the ALJ's Decision found lobbying properly chargeable to nonmember objectors, should it be reversed. The Board should also overrule the ALJ's evidentiary decisions regarding Charging Party's subpoena, and the relevance of testimony from the affected employees and expert witness. The Board should remand the case for trial. Where the ALJ refused to rule that the Union must provide *Beck* objectors with proof that the *Beck* disclosure has been audited, the Board should insist on a standard of reliability consistent with its own precedent and binding authority.

Dated this 27th day of April, 2011.

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Respectfully submitted,
/s/

Matthew C. Muggeridge
c/o National Right to Work Legal
Defense Foundation
8001 Braddock Road, Suite 600
Springfield, VA 22160
(703) 321-8510
Attorney for Charging Party Jeanette Geary

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Exceptions and Brief was electronically filed via the NLRB website. A copy of the foregoing was also electronically filed with Region 1, and was sent via e-mail to Don Firenze, Counsel for the Acting General Counsel (Don.Firenze@nlrb.gov) and to Chris Callaci, Counsel for the UNAP, (ccallaci@unap.org) this 27th day of April, 2011.

/s/ Matthew C. Muggeridge

Matthew C. Muggeridge

ROSS CONCLUSION – IN THE MATTER OF
UNITED NURSES & ALLIED PROFESSIONALS & JEANETTE GEARY

I have been retained by Matthew C. Muggeridge, attorney for Charging Party, Jeanette Geary, to study and comment upon Respondent, United Nurses & Allied Professionals (UNAP), "expenditures for representational activities", a copy of which is attached as Exhibit "B" of the National Labor Relations Board, First Region's, Amended Complaint And Notice of Hearing.

Exhibit "B" includes a September 30, 2009, letter from Linda McDonald, RN, President of UNAP wherein she indicates the major categories of expenses of the UNAP and Kent Hospital Local 5008, together with chargeable and non-chargeable expense calculations. Attached to the letter are two sets of calculations.

The First Set is a one page document indicating Local 5008's Projected, Chargeable and Non-chargeable Expenses, with Chargeable Percentages, covering an undisclosed time period. Also indicated are the monthly local dues for members and nonmembers.

The Second Set is a two page document indicating UNAP's Total, Chargeable and Non-chargeable Expenses, with Chargeable Percentages, for the period July 1, 2008 through June 30, 2009.

OVERALL OPINION AND CONCLUSIONS

In Chicago Teachers Union v. Hudson, the United States Supreme Court said, in part, that Union non-member fee payers must be given "sufficient information to gauge the propriety of the Union's (fair share) fee."

In Television Artists AFTRA (KGW Radio) 327 NLRB 474,477 (1999), the Board in part required the information given to objectors by the union be audited "within the generally accepted meaning of the term, in which the auditor independently verifies that the expenditures claimed were actually made rather than accepts the representation of the union".

In my professional opinion, the information contained in the letter and two sets of calculations as part of Exhibit "B", indicated above, do not provide Charging Party with either (a) adequate disclosure or sufficient information for them to gauge the propriety of Respondent's calculations of representational and nonrepresentational activities; or (b) verification by an independent auditor.

In summary, it is my professional opinion that Respondent has failed to provide Charging Party with evidence beyond a mere assertion that the financial disclosure in Exhibit B was based on an independently verified audit.

BASIS AND REASONS THEREFOR

1. When a certified public accountant audits financial information provided by a client, Generally Accepted Auditing Standards require that the auditor provide an accompanying letter stating his opinion on the client's assertion. In the matter at hand, Respondent did not provide Charging Party with such "audit opinion".

2. Local 5008 provided a list of budgeted expenses plus a categorization of such expenses into chargeable and non-chargeable functions for an undisclosed time period. UNAP provided a list of actual expenses plus a categorization of such expenses into chargeable and non-chargeable functions for the period July 1, 2008 through June 30, 2009. In both instances no explanations were given as to the basis, or how the Unions determined their respective chargeable and non-chargeable functional categorizations.

3. Over 97% of Local 5008's budgeted expenses, $107,178, were categorized as chargeable. No documents were provided indicating the basis for this determination.

4. Over 76% of Local 5008's chargeable expenses consisted of "Rep/Office Stipends" ($80,510). Calculations categorizing personnel costs by function, such as chargeable and non-chargeable, require documentation supporting the various tasks performed by the related personnel. Such documentation is normally derived from analyzing contemporaneously maintained time sheets and/or activity reports. No information was provided indicating that such records were maintained.

5. Over 90 % of UNAP's July 1, 2008 through June 30, 2009 expenses, $963,008, were categorized as chargeable. No documents were provided indicating the basis for this determination.

6. Over 67% of UNAP's chargeable expenses consisted of Payroll Liabilities and related benefit expenses ($670,906). Calculations categorizing personnel costs by function, such as chargeable and non-chargeable, require documentation supporting the various tasks performed by the related personnel. Such documentation is normally derived from analyzing contemporaneously maintained time sheets and/or activity reports. No information was provided indicating that such records were maintained.

7. Over 14% of additional UNAP expenses, ($144,365) during the period July 1, 2008 through June 30, 2009, were categorized as chargeable using the same percentage as that used for Payroll Liabilities. Generally accepted cost accounting principles mandate that a "causal/beneficial" relationship be established validating such a procedure. The types of expenses so categorized do not have a relationship to an individual's activity. UNAP did not provide information supporting that any such relationships in fact exist.

8. UNAP did not provide any information supporting the allocations between chargeable and non-chargeable of an additional 14% or $147,432 of expenses.

FORM NLRB-32
(12-07)

SUBPOENA

PLAINTIFF'S EXHIBIT 2

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

To Richard Brooks
UNAP

375 Branch Ave, Providence, RI 02904

As requested by Matthew C. Muggeridge, Attorney for Jeannette Geary
c/o NRTW Legal Defense Foundation, Inc.

whose address is 8001 Braddock Rd Ste. 600 (Street) Springfield (City) VA (State) 22160 (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrataive Law Judge of the National Labor Relations Board

at the Thomas P. O'Neill Jr. Federal Building, 10 Causeway Street, Room 601

in the City of Boston, MA 02222-1072

on the 14th day of Febraury 2011 at 11:00 a.m. (a.m.) (p.m.) or any adjourned or rescheduled date to testify in Nurses & Allied Professionals (Kent Hospital) 1-CB-11135

(Case Name and Number)

In accordance with the Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings), objections to the subpoena must be made by a petition to revoke and must be filed as set forth therein. Petitions to revoke must be received within five days of your having received the subpoena. 29 C.F.R. Section 102.111(b) (3). Failure to follow these regulations may result in the loss of any ability to raise such objections in court.

A - 899498

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Springfield, VA

this 7th day of February 2010

Lester A. Heltzer

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

FORM NLRB-31
(12-07)

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

To Linda MacDonald, President
United Nurses & Allied Professionals
375 Branch Avenue, Providence, RI 02904

As requested by Matthew C. Muggeridge, Attorney fo Jeannette Geary
c/o NRTW Legal Defense Foundation, Inc.

whose address is 8001 BraddockRd Ste. 600 (Street) Springfield (City) VA (State) 22160 (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE

an Administrative Law Judge of the National Labor Relations Board

at the Thomas P. O'Neill Jr. Federal Building, 10 Causeway Street, Room 601

in the City of Boston, MA 02222-1072

on the 14th day of February 2011 at 11:00 a.m. (a.m.) (p.m.) or any adjourned

or rescheduled date to testify in Nurses & Allied Professionals (Kent Hospital) 1-CB-11135

(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books,records, correspondence, and documents:

see attached

In accordance with the Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings), objections to the subpoena must be made by a petition to revoke and must be filed as set forth therein. Petitions to revoke must be received within five days of your having received the subpoena. 29 C.F.R. Section 102.111(b) (3). Failure to follow these regulations may result in the loss of any ability to raise such objections in court.

B - 627867

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Springfield, VA

this 4th day of February 2011

Jesse A. Heltzer

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

Attachment to Subpoena

This subpoena is intended to cover all documents that are available to United Nurses and Allied Professionals Union and its affiliates (the "Union" or "UNAP"). This subpoena covers all documents subject to the Union's custody, control or reasonable acquisition, including, but not limited to, documents in the possession of attorneys, accountants, advisors, affiliates, or other persons directly or indirectly employed by the Union or otherwise subject to its control.

As used in this request, the term "document" means, without limitation, the following items, whether printed or recorded or reproduced by any other mechanical process, or written or produced by hand: agreements, communications, correspondence, faxes, e-mails, memoranda, summaries or records of telephone conversations, summaries or records or personal conversations or interviews, diaries, graphs, reports, notebooks, note charts, plans, summaries or reports of investigations or negotiations, opinions or reports of consultants, photographs, motion picture film, video tapes, brochures, pamphlets, advertisements, circulars, press releases, drafts, letters, data contained in computers, any marginal comments appearing on any documents, tape recordings, and all other writings, figures or symbols of any kind.

I. DOCUMENTS REQUESTED OF UNITED NURSES AND ALLIED PROFESSIONALS (UNAP)

1) Names and addresses of all outside accountants engaged by UNAP, during the period July 3, 2009 and June 30, 2011.
2) All correspondence, including engagement letters, between UNAP and any outside accountants during the period July 3, 2009 and June 30, 2011.
3) All correspondence, including engagement letters, between UNAP and the certified public accountant engaged to perform the expense verification contained in September 30, 2009 letter to Employees ("Beck Disclosure") (attached to Complaint as Exhibit B).
4) All correspondence between UNAP and any other certified public accountants related to their performing the expense verification for the Beck Disclosure.
5) All documents provided by UNAP to the certified public accountant engaged to verify the chargeable and non-chargeable expenses(Beck Calculation) contained in the Beck Disclosure.
6) All documents that support UNAP's determination that 93% of its "Payroll Liabilities" were chargeable as stated in its Beck Disclosure.
7) Time sheets, activity reports or other documents used to support how the individuals listed on "Sheet 2" of Beck Disclosure calculated their respective chargeable percentages.
8) All documents that indicate the "Payroll Liabilities" of those individuals listed on "Sheet 2" of Beck Disclosure.
9) All documents that indicate the "Payroll Liabilities" of any other individuals not listed on "Sheet 2" of Beck Disclosure.
10) Written guidance given to individuals comprising the "Payroll Liabilities" expense line item of Beck Disclosure to assist them in determining whether their time spent was chargeable or non-chargeable.

11) All documents that support UNAP's determination that 93% of its "Property Tax" "Accountant" and "Office Supplies" expense line items of Beck Disclosure were chargeable.
12) All documents that support UNAP's determination that 97% of its "Postage", "Hotels", "Vermont Council" and "Meals & Entertainment" line items of Beck Disclosure were chargeable.
13) Copy of the certified public accountant's report stating that UNAP's chargeable and non-chargeable expenses were verified.
14) All timesheets, activity reports, or other documents relating to lobbying activities of Richard Brooks, Linda McDonald, Janice Salsich, Paul Levin, Lynn Blais, and Cynthia Lussier.
15) For the individuals named in Para. 13 previously, all timesheets, activity reports, guidance or other documents used to support the used to support how the individuals listed on "Sheet 2" calculated the amount of time spent on lobbying.
16) For the period covered by the financial statements attached to Linda McDonald's September 30, 2009 letter to Employees, all documents regarding the engagement, payment, or guidance provided to professional or volunteer lobbyists

(DOCUMENTS RELATED TO UNAP LOCAL 5008 (Kent Hospital))

17) Names and addresses of all outside accountants engaged by Kent Local 5008, during the period July 3, 2009 and June 30, 2011.
18) All correspondence, including engagement letters, between Kent Local 5008 and any outside accountants during the period July 3, 2009 and June 30, 2011.
19) All correspondence, including engagement letters, between Kent Local 5008 and the certified public accountant engaged to perform the expense verification for Beck Disclosure.
20) All correspondence between Kent Local 5008 and any other certified public accountants related to their performing the expense verification for Beck Disclosure.
21) All documents provided by Kent Local 5008 to the certified public accountant engaged to verify its chargeable and non-chargeable expense calculation for Beck Disclosure.
22) All documents that support Kent Local 5008's determination that 97% of its "Rep/Officer Stipend" in Beck Disclosure was chargeable.
23) Time sheets, activity reports or other documents used to support how individuals comprising the "Rep/Officer Stipend" expense line item of Beck Disclosure determined whether their time spent was chargeable or non-chargeable.
24) Written guidance given to individuals comprising the "Rep/Officer Stipend" expense line item of Beck Disclosure to assist them in determining whether their time spent was chargeable or non-chargeable.
25) All documents that support Kent Local 5008's determination in its Beck Disclosure that 100% of its "Legal & Arbitration" expense was chargeable.
26) Copy of the certified public accountant's report stating that the chargeable and non-chargeable expenses of Kent Local 5008 Beck Disclosure were verified.